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No. 93-1713

In The
Supreme Court of the United States
October Term 1993

DAVID WAYFIELD,

Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

Motion For Permission to File Brief Amicus Curiae in Support of Petitioner

and

Amicus Curiae Brief Of The Polish Historical Society

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**Motion For Permission To File Brief
Amicus Curiae in Support of Petitioner**

The Polish Historical Society (PHS) respectfully moves this Court for permission to file the accompanying *Amicus Curiae* brief in support of Petitioner. Consent was granted by the Petitioner for filing of a brief by the PHS and was filed with this Court's Clerk. Leave from this Court is requested under Rule 37 of this Court.

PHS is an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. The membership of the PHS includes scholars, individuals, U.S. citizens and lawful residents joined by a common interest in history.

The interest of *Amicus* is set forth below. The accompanying brief addresses issues of fact concerning the public at large, the Petitioner and Respondents. It describes both overt and surreptitious censorship, each of which constitute an abridgment of civil rights, not only by Respondents, the Vineyard Haven Public Library, but also by other public libraries as representatives of state and municipal authorities nationwide.

Amicus believes that its brief will supplement rather than reiterate the arguments made by the parties. Due to the national implications of the issues submitted by the Petitioner, PHS respectfully moves this Court for permission to file the *Amicus Curiae* Brief submitted herewith. Respondents oppose the filing of this brief.

Respectfully submitted,

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Amicus Curiae Brief Of The Polish Historical Society in Support of the Petitioner

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I. INTEREST OF THE *AMICUS CURIAE*:

The Polish Historical Society (PHS) was established in 1988 as an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. PHS specializes in retrieval, collection, and release of archival documentation, which until recently was reposited in archives with restricted access.

The membership of the PHS includes scholars, individuals, citizens and lawful residents of the United States, joined by common interests in the history of both World Wars, including the history of the Jews who prior to 1939 constituted one third of the population of Poland.

Amicus also holds itself to be an expert at evaluating the completeness and balance of library collections on the subject of both World Wars. Struck by a profound imbalance on this matter at many major libraries, and then at the Vineyard Haven Public Library, the PHS decided to file the instant brief.

Amicus is committed in principle and practice to the freedoms afforded and protected by the First Amendment and recognizes that scholarly progress cannot proceed without free inquiry. *Amicus* supports affirmative enforcement of the American Library Association's (ALA) Library Bill of Rights which states that:

"Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

In the Middle Ages, science and humanities were static and stifled by restriction of speech and thought. This era is consequently now remembered with disapprobation. The Renaissance occurred after freedom of speech and inquiry was won following centuries of effort and through the tenacity of a few.

Calls for suppression of debate and of historical revisionism appear as a return to the principles of the Dark Ages which claimed that an observable straight horizon is undebatable proof of the flatness of the earth. Justice Louis Brandeis provided an answer for those who are concerned about propriety of historical revisionism: "[t]o expose ... fallacies... the remedy... is more speech, not enforced silence."

Accurate knowledge of history is essential for the future well-being of all. George Santayana wrote that those who disregard the past are bound to repeat it. George Orwell wrote that "Who controls the past controls the future."

Revisionism must be an integral part of the historical analysis of both World Wars because major participants also fought with words. The historical record must be set straight on some fictitious wartime propaganda, especially Soviet press reports, which were then accepted as factual in the West.

This revisionist process has already been started. For instance, in recent years it was finally publicized world wide that 4,500 Polish officers had been murdered at Katyn by the Soviet NKVD in 1940. Yet within the past decade, a Soviet documentary shown on American television screens was still blaming the Nazis for this massacre, with backup from supposed local "eyewitnesses" in a wartime propaganda film clip.

As professionals, *Amicus* learned that historical studies have to concentrate on interpretation of objective physical facts in preference to that of subjective (or distorted or even extorted) eyewitness testimony. By uncovering physical archival evidence, i.e. wartime aerial photography of Katyn, it has been shown that the claims of Germans and the Soviets based on eyewitness testimony were inaccurate regarding the Katyn massacre. The German experts claimed that the Soviets killed 10,000 Polish POW officers, while the Soviet eyewitnesses testified that these Poles were massacred by the Germans. While the Military International Tribunal at Nuremberg ascribed the guilt to the Nazis, examination of the wartime aerial photographs revealed that the mass graves could not contain more than 4,500 individuals and had been filled with these victims of the NKVD prior to the German invasion.

By analyzing until recently unavailable physical documentation in regard to the Nazi concentration camps (data from wartime aerial photography, post-war archeological explorations, forensic toxicology in regard to Zyklon B and diesel exhaust, and chemical technology of the fabrication of soap), it was realized that many of the World War II

Holocaust claims, especially Soviet, were exaggerated, as has been acknowledged by Jewish colleagues. Furthermore, in the process of its studies, *Amicus* uncovered a similarity between the patterns of martyrology of the First and the Second World Wars, which provides a new insight into this matter.

Amicus's convictions about the WW II Holocaust have been articulated in a document entitled "Holocaust Is Undeniable But Should Be Debated," reprinted almost in its entirety on January 1, 1994 by the editors of The New York Times under the headline: "Don't Cut Off All Debate About the Holocaust". *Amicus* opposes most of the arguments offered by those who have been described as "Holocaust deniers". However, *Amicus* agrees with some scholarly tenets of some Holocaust revisionists, which are also accepted by widely recognized Jewish historians.

II. PURPOSE OF *AMICUS* BRIEF:

The gravamen of the Petitioner's complaint is the discriminatory treatment he received from Respondents, the Tisbury Senior Center and the local Vineyard Haven Public Library (VHPL), both public community forums.

Because the rules of this Court require brevity, Wayfield's Petition asserts, but does not document in depth, an intense censorship, practiced by the respondent VHPL in contravention of its own regulations. Neither did the Petitioner discuss a similar censorship practiced by library authorities whose guidance the VHPL follows:

- Cape Library Automative Material Sharing (CLAMS), an organized regional consortium of public libraries;
- Library of Congress, the national leader in the area of labeling and acquisitions;
- Online Computer Library Center (OCLC), the world leader in cataloguing. The OCLC provides for librarians, via phone lines and computer terminals, "state of the art," instant information about holdings in about 15,000 American and 3,000 larger foreign libraries. The existence of the OCLC is not publicized for the reading public so that its extensive and expensive on-line services will not be over-used by non-professionals.

The purpose of *Amicus* is to call to the Court's attention the fact that there exists nationwide abridgment of First Amendment rights. To fill the Petition's factual gaps, *Amicus* will:

- render a scholarly evaluation of censorship practices;
- provide the Court with an analysis of the holdings on controversial subjects at Respondent library, the VHPL;
- compare said holdings with holdings in other libraries; and
- expound on the evidence and etiology of censorship.

Finally, after the presentation of the "technical data" on the following pages, *Amicus* respectfully suggests to this Court that:

- the most likely reason for the nationwide abridgment of the First Amendment rights by the libraries nationwide is frequently not malicious but is a product of the funding system of the libraries, and
- that said wrongs might be permanently ameliorated by this Court's decision which by affirming First Amendment principles could prompt libraries to restructure funding in a such a way as to make them at least partially financially and politically independent.

III. SUMMARY OF ARGUMENT:

1. It appears that the near total absence in public libraries of World War II and African-American historical revisionist books and materials represents, under color of law, discrimination and abridgment of freedom to speak and read. Research reveals that such an abridgment of the rights of the First Amendment is encountered not only at Respondent Martha's Vineyard library but is practised nationwide.

Amicus believes that the intense, unconstitutional censorship perpetrated by these libraries is inadvertent. This self-imposed censorhip evolved over the last five decades as a result of lack of tenured governmental funding and overdependence of public libraries upon private contributors. Thus, public libraries were forced to follow politically fashionable trends. As a resùlt, their adherence to non-discriminatory and divergent view concepts was greatly diminished.

2. *Amicus* argues that the singular victory of the press (Village Voice and Chicago Sun-Times) and public opinion in overcoming initially successful censorship by private organizations (such as The B'nai B'rith) and public institutions (such as the American Library Association) of an employee of the Chicago Public Library, who had prepared a comprehensive bibliography of the Palestinian/Israeli conflict, should not be considered as a sufficient safeguard of First Amendment rights elsewhere, and thus requires affirmative involvement of this Court in this and other such cases.

IV. ARGUMENT

1. PUBLIC LIBRARIES OSTENSIBLY OBSERVE THE FIRST AMENDMENT:

In order to avoid abridgment of the First Amendment, virtually all public libraries in the United States subscribe to the American Library Association's Library Bill of Rights which stipulates that:

> "2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

Acquisitions are usually at the leading edge of controversies in all libraries. Most small libraries do not have a formal, written selection policy for acquisitions, although this is recommended by the ALA. More than likely, their overburdened staff does not have time to prepare such in a written format, and this suffices as long as from the small numbers of library users no one objects to this deficiency. Nevertheless, virtually all public libraries accept and practice the precepts set forth in the *Materials Selection Policy Summary* of the Santa Monica Public Library, which calls for diversity and for satisfying the needs of various groups within the community:

> "1. The basic test for selection of any item is whether it is of permanent, current, or potential value to the community. Other criteria include the quality, cost, format, published reviews, public demand, and availability of the material.
> 2. Materials are selected to satisfy the prevalent needs and interests of the majority of the community as well as diverse groups within the community

> 3. The Library attempts to present differing viewpoints on contemporary issues, some of which are controversial. Selected materials, therefore, may be meaningful and significant to some individuals, while offensive, shocking, or boring to others. Materials are selected for their overall contribution to collection."

Predicated on limits of budget, shelf space, and degree of community interest, every library is compelled to select and reject printed and audio-visual materials. Such selection and rejection is necessary and constitutional and does not abridge the spirit of the First Amendment as long as the selection is not discriminatory.

Most libraries do indeed apply the above freedom to read and speak guidelines as long as the censorial pressure comes in the area of politically popular topics. However, intense and nationwide departures are found in the form of internal censorship in the area of politically unfashionable or unpopular statements, especially if such controversy may affect library funding. Such internal censorship in this area is found nationwide:

- in small libraries such as the Respondent VHPL in Tisbury, Massachusetts,
- in medium and major libraries and/or library systems in towns (such as Darien, Connecticut), and cities (such as Stamford, Connecticut, Cincinnati, Ohio, and New York, New York),
- in regional and statewide library systems such as CLAMS in Massachusetts, REQUEST in Connecticut, OhioLINK in Ohio, and
- even in the two largest American libraries, the Library of Congress and the New York Public Library.

2. HOW LIBRARIES FIGHT OUTSIDE CENSORSHIP:

The egalitarian policy of libraries is buttresssed against any of the outside-of-the-library pressures for favoritism and accusations of censorship. The safeguarding organizations were established by and are located at the Chicago headquarters of the American Library Association [ALA], the oldest and largest in the world organization of librarians:

1. The Freedom to Read Foundation [FRF] was established in 1969, essentially to provide legal aid for librarians and libraries accused by the public and/or government of liberalism in acquisition policies. FRF has previously filed with this Court various *amici* briefs opposing outside restrictions on acquisition policies of libraries.

2. The Office of Intellectual Freedom [OIF] was established in 1967 as a watchdog against censorship directed at libraries. Through its monthly *"Newsletter on Intellectual Freedom,"* it informs libraries about outside censorial pressures and ongoing legislative battles at various local courts. One of its permanent columns is devoted to reporting on the decisions of this Court. The last page of this newsletter, entitled "Intellectual Freedom Bibliography," provides the libraries with a digest of American daily press and periodicals on the subject. In addition, the OIF prepared and periodically updates the Intellectual Freedom Manual, available at nearly every public library.

3. The Intellectual Freedom Committee [IFC] was established in 1940 as an advisory unit constantly reviewing and updating the policies which protect, enforce, and address the rights of the First Amendment.

ALA , FRF, OIF and IFC are the authors and sponsors of remarkable documents. The ALA's Library Bill of Rights, the *Magna Carta* for librarians and readers everywhere, protects freedom of speech and diversity of library collections. The FRF's Freedom to Read Statement pledges:

> "To foster libraries as institutions fulfilling the promise of the First Amendment for every citizen; to support the right of libraries to include in their collections and make available to the public any work that they may legally acquire; and to set legal precedent for the Freedom to Read of all citizens."

and thoroughly condemns surreptitious censorship.

Thus, during the past decades, armed with the above tools, libraries skillfully and forcefully resisted **outside** censorial pressures in order to protect themselves from potential litigation based on First Amendment contravention, especially if it involves lesbianism, homosexuality and pornography. As demonstrated on the following pages, however, libraries fail to do so when subjects are politically unpopular and might, on balance, impact adversely upon their funding. The libraries' rules and bills of rights do not have built-in safeguards, other than this Court, to prevent outside and internal censorship.

3. FORMS OF CENSORSHIP PRACTICED BY LIBRARIANS AND LIBRARIES:

Libraries and librarians have numerous methods of applying overt and surreptitious censorship and selection policies. All variants of censorship below were encountered in regard to the subjects under consideration in this brief.

Exclusionary acquisition policy:
The most common form of censorship practiced by public libraries is an exclusionary acquisition policy. Printed and audiovisual materials, which are disliked by the librarians or perceived as unpleasant to potential donors, are simply not bought.
In not purchasing such materials, libraries may follow various practices:

- When a reader requests that such a purchase be made, most often the library does not respond. Procrastination will usually destroy the interest of the reader.
- If a reader pursues the request, the library may answer that:
  - -- it lacks sufficient funds for the purchase.
  - -- the item has not been reviewed in The Library Journal, a publication which is controlled by the ALA, or any other journal. For such purchasing purpose, a review from a revisionist journal is not acceptable because librarians may consider such specialty reviews not to be authoritative.
  - -- the item is published by a small publishing house rather than by a well-known publisher.
  - -- the library's acquisition board makes purchasing decisions.

-- there is no interest in the community about revisionist materials. In replying thus, libraries appear unaware of growing interest in Holocaust revisionism, as exemplified by:

-- the fact that the editor of Martyrdom and Survival, the flagship publication of Holocaust survivors and of the Yad Vashem Memorial in Jerusalem, proclaimed that we live in "the era of Holocaust Revisionism."

-- the fact that at least four anti-revisionist books have been published in the last two years.

-- the fact that about 60% of the about 408 articles published about the Holocaust in five leading newspapers in the United States during the past three years refer to Holocaust revisionism.

-- the fact that 9-22 % of adult Americans have doubts about the Holocaust according to recent public opinion polls.

Another way for libraries to exclude controversial material is by not accepting donations. Even if accepted, a controversial donation may subsequently be weeded out as part of the library's customary policy of discarding books for reasons such as making room for new acquisitions or because of a book's seemingly worn condition.

Covert censorship:

Covert censorship might be exemplified by sloppy, "erroneous" or pejorative labeling in catalogs of controversial materials and books. According to

the ALA's Statement on Labeling as an interpretation of the Library Bill of Rights:

"Labeling is the practice of describing or designing certain library materials by affixing a prejudicial label to them or segregating them by a prejudicial system. The Americal Library Association opposes this as a means of predisposing people's attitudes towards library materials for the following reasons:

1. Labeling is an attempt to prejudice attitudes and as such, is a censor's tool.

2. Some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable. However, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association opposes the establishment of such criteria.

3. Libraries do not advocate the ideas found in their collections. The presence of books and other resources in a library does not indicate does not indicate encoursement of their contents by the library.

The American Library Association opposes efforts which aim at closing any path to knowledge."

4. LIBRARY HOLDINGS ON AFRICAN-AMERICAN REVISIONIST SUBJECTS:

An authority on the subject of African-American studies, albeit surrounded by controversy, is City College of New York Professor Leonard Jeffries. Within the past year, he was reinstated as the Chairman of the department from which he had been dismissed after 20 years of service. The dismissal followed his public speech four years ago in Albany, N.Y. in which he expressed unpopular views stemming from his research on the ethnic background of slave traders in England and America. Jeffries won a highly publicized March 1994 trial in New York City. In addition to reinstatement, he was awarded $400,000 in damages due to improper dismissal.

Amicus obtained from Professor Jeffries a list of the seven foremost books on the subject of African-American historical revisionism. These books, rightly or wrongly, claim over-representation of persons of the Jewish faith in the slave trade and describe flourishing civilizations in pre-colonial Africa. Their titles are as follows:

1. "Message to the Blackman in America", by Elijah Muhammed, United Brothers, pub.
2. "Stolen Legacy", by George G. James, African Islam Mission Pubs., 1954.
3. "Stolen Legacy: The Greeks Were Not the Authors of Greek Philosophy but the People of North Africa Commonly Called the Egyptians", by George G. James, Richardson Pub., 1988.
4. "Iceman Inheritance: Prehistoric Sources of Western Man's Racism, Sexism and Aggression" , by Michael Bradley, Kayode Pub., 1991.

5. "Civilization or Barbarism: An Authentic Anthropology" .by Cheikh A. Diop, L. Hill Books, 1991.
6. "African Origin of Civilization: Myth or Reality". by Cheikh A. Diop, L. Hill Books, 1974.
7. "Africa: Mother of Western Civilization", by Yosef Ben-Jochannan, Black Classic , pub., 1988.

Oak Bluffs, a little town in Martha's Vineyard, has a small, year-round community of African-American intellectuals dating back almost 150 years. In summer, it swells with vacationing African-Americans which account for 30% of the summertime Oak Bluffs population.

According to projections of the U.S. Population Census, Oak Bluffs in 1990 consisted of 2,517 white and 193 black year-round residents. In 1990, Vineyard Haven consisted of 3,120 year-round inhabitants of which 85 (or 2.9 %) were African-American. Because of the three-mile proximity of Vineyard Haven and Oak Bluffs, both are served by the Respondent VHPL.

A search through CLAMS, a computerized catalog of 23 libraries at Martha's Vineyard and the Cape Cod region, which includes the Respondent VHPL, revealed that **none** of the African-American revisionist books dealing primarily with the history of American slavery were available at these libraries.

Conversely, a search through CLAMS for the book entitled *Uncle Tom's Cabin* revealed two copies in the entire Cape Cod/Martha's Vineyard system. Seven libraries in the CLAMS system contain eleven copies of *Anne Frank, the Diary of a Young Girl*, with the Respondent VHPL containing two copies of this book.

Darien is an old Connecticut coastal town, one of the wealthiest in the United States. According to the projections of the 1990 U.S. Census, the population of Darien in 1993 consisted of about 18,000 inhabitants, 96.5% Caucasians and 0.5% Blacks. Until about two decades ago, Darien was a homogenous community of White Anglo-Saxon Protestants, who were legally and successfully resisting the influx of Catholics, Jews, Blacks and immigrants. Today, there is a small but steadily growing number of Jewish-Americans in Darien, but very few African-Americans have thus far moved into this community.

According to Connecticut State Library records, the Darien Library "is the busiest public library in Connecticut on a per capita basis." A catalog search through "Request" revealed that none of the above-mentioned African-American revisionist books are available at this or any other Connecticut library.

The Darien Library contains two copies of *Uncle Tom's Cabin*. Despite obvious under-representation by Jewish-Americans in this locality, there are 24 (twenty-four) copies of the Anne Frank diary at the Darien Library.

In Professor Jeffries' home city, the reference librarians at the New York Public Library, the second largest in the nation, were able to provide instantly on request the transcript of his "offending" speech delivered in 1990. They were unable, however, to retrieve from any of the library catalogs available to them (their own or worldwide [OCLC]), the title of any of the above-listed African-American

revisionist books submitted by Professor Jeffries. This example is perhaps the best illustration of institutionalized suppression and "silent" censorship.

- The absence of African-American revisionist books at the Respondent library is discriminatory and contradicts the library's written policy claiming adherence to and encouragement of diversity of subjects and viewpoints. If the ethnic population of the community were to have any proper bearing on the representation of ethnic books in that community's library, this transgression might be slightly mitigated by the small number of year-round African-American residents, despite a larger number of summer visitors of that ethnic background.

- The absence of African-American revisionist books in 157 Connecticut libraries represents, under color of law, discrimination, censorship and abridgment of freedom to speak and read. It contradicts the libraries' own written policy regarding diversity of subjects and viewpoints, prescribed in the Intellectual Freedom Handbook published by the Connecticut Library Association.

- The abridgment of the First Amendment is encountered not only at the Respondent library but also nationwide as exemplified above, and deprives millions of citizens of their right to read and know divergent views.

- It appears that the internal censorship perpetrated by public libraries evolved spontaneously through pervasive permeation of our society with the most popular views because the guiding national institutions, such as the Library of Congress, and organizations, such as the American Library Association, have not taken appropriate action to oppose such censorship.

5. LIBRARY HOLDINGS ON HOLOCAUST REVISIONIST SUBJECTS:

Examination by *Amicus* of Vineyard Haven Public Library:

In April, 1994, the Respondent Library (VHPL), with a total of about 50,000 volumes in its stacks, was visited by an *Amicus* representative. The purpose of the visit was to examine its holdings for the presence or absence of any Holocaust revisionist materials. This visit confirmed that Petitioner's multiple requests over a number of years that VPHL purchase such materials or accept them as donations proved unsuccessful.

At first, a reference librarian was requested to help. She appeared eager and very familiar with the term "Holocaust." The library catalog's subject heading "Holocaust, Jewish" revealed the presence of 23 books. She seemed vaguely familiar with the term "revisionism". Her enthusiasm faltered into disappointment and exasperation when she realized that she was unable to help. She exhausted all possibilities of her library's own computerized catalog and those of the Computerized Library Automative Material Sharing (CLAMS), a computerized database system which encompasses 23 regional libraries. She suggested that on some other day, the Boston Public Library might be of help. This librarian did not know that Holocaust revisionist materials might be found only under the subject subheading "Holocaust, Jewish (1939-1945), errors, inventions, etc."

Then, the *Amicus* representative personally checked the VHPL catalog and shelves as well as the CLAMS database without any librarian's assistance. It was found that VHPL uses the Library of Congress subject headings and the Dewey Decimal cataloging system. In these systems of classification, "Holocaust, Jewish (1939-1945)" is subdivided into 314 subheadings. Some of the subheadings are very detailed, as, for example, in "Holocaust, Jewish (1939-1945), narratives, Wlodawka". In Poland, there are several hamlets and villages named Wlodawka: none of them contain more than 75 families. A subheading "Holocaust, Jewish (1939-1945), revisionism" or the subject "Revisionism" does not exist.

Next, the VHPL catalogs were checked for the presence or absence of two foremost Holocaust revisionist titles and books:

> -*The Hoax of the Twentieth Century* by Northwestern University Professor Arthur R. Butz, Noontide Press, 1976;
> -*Air Photo Evidence, Auschwitz, Treblinka...* by John C. Ball, Ball Resource Services, 1992. This is an album of high resolution wartime aerial photographs of Nazi concentration camps and Katyn.

Neither of these books could be found on the VHPL shelves or in the VHPL and CLAMS catalogs. This exhausted the potential resources in this regard of the Respondent library and its regional database.

At this point, an average Martha's Vineyard reader would have dropped his or her search for revisionism or Holocaust revisionism, considering this to be a marginal fad, not worthy of attention because of lack of documentation.

Examination by *Amicus* of Holocaust Revisionist Holdings in Libraries of Medium-Sized Cities:

The next phase of examining the availability of revisionist materials was accomplished in Stamford, Connecticut, a medium-sized city in the New York metropolitan area. Its Ferguson Library contains 500,000 volumes on its shelves, and uses the Library of Congress subject heading classification. Its Connecticut-wide computerized catalog is called "Request" and encompasses 157 libraries.

At different times, two reference librarians at the Ferguson Library were asked in 1994 for help in locating any Holocaust revisionist materials. These librarians checked the library's computerized catalog through subject heading and word searches, which yielded no results. They then said that they could proceed no further unless the requestor knew the name of some revisionist book.

At this point, an average reader would likely have abandoned the search.

However, *Amicus* discovered that under the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc.", the "Request" computerized catalog lists 12 books, of which 6 are revisionist and 6 are anti-revisionist.

Examination by *Amicus* of Holocaust Revisionist Holdings in a Large City Library:

Cincinnati, Ohio is a large industrial city with large universities. The Cincinnati Public Library contains about 5,000,000 volumes. It is conjoined with other

libraries in the state within OhioLINK, a computerized catalog network. University libraries in Ohio are conjoined within UCLID, an academic computerized catalog network listing scholarly books and materials. Both of these computerized catalog systems use the Library of Congress subject headings.

In 1994, a word search through UCLID of "Holocaust" yielded 747 book titles. At the University of Cincinnati, two reference librarians, familiar with the term "Holocaust revisionism," were unable to locate or explain the absence of the subheading "Holocaust, Jewish (1939-1945), revisionism" among the 314 subheadings on the Holocaust. They located the subheading "Holocaust, Jewish (1939-1945), errors, inventions, etc." which yielded the titles of two anti-revisionist books published in 1992 and one in 1993. According to the UCLID catalog, not a single author or book title pertaining to Holocaust revisionism is available at academic libraries in the State of Ohio.

At this point, an average Ohio graduate student would likely have discontinued his or her search for revisionism.

The modern and well-equipped Cincinnati Public Library provides uniquely unrestricted and self-help access for its users to the gargantuan database of the computerized catalog called "First Search". This catalog was compiled during the last two decades by the Online Computer Library Center [OCLC], Inc. The OCLC catalog provides a costly but easy access to about 2,000,000,000 volumes in 15,000 libraries in the United States and to about 3,000 large libraries in foreign countries.

In 1994, at the Cincinnati Public Library the OCLC database search yielded 8,881 titles on the subject "Holocaust, Jewish (1939-1945). The subject search "Revisionism" yielded 1,139 titles, mostly related to Leon Trotsky's revisionism of Bolshevism and revisionism in a field of engineering, as well as many books in foreign languages.

A reference librarian at the Cincinnati Public Library came upon a recent anti-revisionist title under the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, misc." This subject heading yielded 149 titles in OCLC. The *Amicus* representative was able to identify 52 of these as representing Holocaust revisionist books, many of which were in French, German, Spanish, Swedish and Italian. Among them were the two above-mentioned foremost Holocaust revisionist books in the English language.

Arthur R. Butz's *The Hoax of the Twentieth Century* was located at five locations in the United States:

1. Library of Congress, District of Columbia
2. Columbus Metropolitan Library in Columbus, Ohio
3. St. John University, Collegeville, Minnesota
4. Concocheague District Library in Chambersburg, Pennsylvania
5. Manitowoc Public Library in Manitowoc, Minnesota.

John C. Ball's *Air Photo Evidence, Auschwitz, Treblinka...* was located at a single library in the United States:

- Allen County Public Library, Fort Wayne, Indiana.

- Over the last ten years, despite repetitious requests by Petitioner to purchase or accept as donation any Holocaust revisionist book, not a single such volume had been acquired by the Respondent as of April, 1994, through its practice of exclusionary censorship.

- Intense censorial acquisition practices against Holocaust revisionism by small, medium, and large American libraries are augmented by the imprecise, pejorative and/or erroneous labeling (cataloging) practices introduced by the Library of Congress, the undisputed leader in this field.

- American libraries have not followed the recent advances of scholarly Holocaust revisionism (such as the official, major lowering of the total victim count of the Auschwitz concentration camp). Consequently, they have not reclassified their thereby outdated books into the "errors, inventions, etc." subheading, nor have removed from a pejorative labeling category any historically accurate revisionist books.

6. "Books Won't Stay Banned. Ideas Won't Go to Jail. In the Long Run of History, the Censor and the Inquisitor Have Always Lost,"

The renowned Polish astronomer Nicholas Copernicus is a good example of how correct scientific ideas based on observations of physical facts (instead of eyewitness testimony that the earth is flat) were initially ostracized and labeled as "lunatic" (actually solarian). Copernicus, not protected by the First Amendment, could have his (then outlandish) discovery published only posthumously (in 1543). For almost two centuries, the heliocentric theory was magisterially proscribed *per curiam* and his books were banned. Vanguard and prescient scholars perished at the stake (Giordano Bruno in 1600), or were forced to recant (Galileo Galilei in 1633).

Despite persecutions and erroneous adjudication of science by the highest contemporary courts, the "lunatic fringe" theory of earth revolving around sun, with passage of time, became accepted as fact. Copernicus' theory of "earth revolutions around the sun" soon gave origin to the naming of historical events, first of the English (1688), then French (1780) and later American *Revolutions.*

Today, the intellectual importance of historical revisionism is politically decried and underrated. Its leaders have been assassinated (revisionist publisher Francois Duprai in France in 1976), bludgeoned (Professor Robert Faurisson in France in 1989), and banned, arrested and jailed (British historian David Irving, from Australia in 1993, in Canada in 1992,

and in England in 1994). Faced with the well publicized, recent devaluation of exaggerated WW II Holocaust claims, one must consider that in the future, some aspects of historical revisionism might follow the fate not of lunacy but of heliocentricity. The history of jurisprudence (and especially of the great Galilean trial) teaches that it is best for the courts not to adjudicate the leading edge of science.

Conversely, the recent history of science reveals that legislation favoring one side in a political or historic debate does not withstand the test of free scholarly inquiry. Such happened in the case of the racist theories of Nazism (Friedrich Nietzsche), the enviro-genetic theories of Communism (Trofim Lysenko), and the Soviet-provided 4,000,000 victim count of the Auschwitz concentration camp, "officially" reduced to about 1,500,000 in 1990, and to less than 800,000 in 1993. Nevertheless, in May of 1994, the German Bundesrat (Senate) passed a bill cutting off all debate on the WW II Holocaust.

"Books won't stay banned. Ideas won't go to jail. In the long run of history, the censor and the inquisitor have always lost," wrote Yale University President A. Whitney Griswold in 1952. But forty years later, at this renowned institution, ideas of historical revisionism are still quashed and at its famous Sterling Library, revisionists' books are still banned. It seems that over the centuries some academicians have insufficiently learned from the history of science and jurisprudence.

In December of 1993, editors of the Brandeis University campus newspaper supported the concept of free speech by printing a preposterous

advertisement of a populist Holocaust denier proclaiming that "[t]he U.S. Holocaust Memorial Museum displays no proof anywhere of homicidal 'gassing' chambers and no proof that even *one individual* was 'gassed'..." The newspaper was likely inspired by the words of the Justice Louis Brandeis who in 1927 wrote : "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by process of education, the remedy to be applied is more speech, not enforced silence."

It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.

It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society, each individual is free to determine for himself what he wishes to read, and each group is free to determine what it will recommend to its freely associated members. Nonetheless, no group has the right to take the law into its own hands, and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is not freedom if it is accorded only to the accepted and the inoffensive.

It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression.

V. CONCLUSION:

For all of the foregoing reasons and for the reasons set forth in Petitioner's brief, *Amicus* respectfully requests this Court to grant the writ of certiorari submitted by the Petitioner.

Respectfully submitted,

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June 6, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 1994, I caused to be served by first class mail, postage prepaid, a copy of Motion for Permission to File Amicus Curiae Brief and Amicus Brief of the Polish Historical Society upon:

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All parties required to be served have been served.

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